is not liable on the loan and partial summary judgment is not granted against him.

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FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF MOSES HENRY and JOHN SIGRAH, Appellants, vs. HEIRS OF ELISE AKINAGA, Appellees.	APPEAL CASE NO. K4-2013 Kosrae Civil Action No. 81-10

OPINION

Argued: February 18, 2014
Decided: March 19, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

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HEADNOTES

Appellate Review – Standard – Civil Cases – De Novo

Questions of law are reviewed de novo. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300 (App. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings

Since a trial court's findings are presumptively correct, any challenged findings of fact will be reviewed on a clearly erroneous standard. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300-01 (App. 2014).

Appellate Review; Courts

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

Appellate Review – Decisions Reviewable

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts and neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to a State Court appellate division. There is thus no requirement that an appeal from Land Court be heard by a three-judge panel in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

Civil Procedure – Res Judicata; Statutes – Construction

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

Civil Procedure – Res Judicata; Judgments

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Civil Procedure – Res Judicata; Compact of Free Association; Judgments – Relief from Judgment

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Civil Procedure – Res Judicata

The doctrine of res judicata applies to Trust Territory High Court decisions, and FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Civil Procedure – Res Judicata; Judgments

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Civil Procedure – Res Judicata

For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Judgments – Collateral Attack

A 1930s ¥400 purchase price for over 600,000 square meters of land on Kosrae does not make

the whole transaction very questionable and thus the Trust Territory High Court judgment confirming it suspect when ¥400 would have equaled $200 in the 1930s and $200 was a sizeable sum then. The "sale" amount cannot be used to undermine the Trust Territory High Court judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Property – Easements

"Rights of way" over land are such things as roads, footpaths, and utility easements. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Civil Procedure – Res Judicata; Judgments

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

Appellate Review; Courts

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

Judgments; Transition of Authority

An argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

Constitutional Law

Constitutional rights are generally prospective, not retroactive. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Constitutional Law – Due Process

Although there was no Kosrae or FSM Constitution in 1960 and constitutional rights are generally prospective, not retroactive, the Trust Territory Bill of Rights, whose due process clause was presumed to have the same meaning as in the United States, was in effect then. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Civil Procedure – Res Judicata; Judgments – Collateral Attack; Judgments – Relief from Judgment

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Judgments – Void

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Judgments – Collateral Attack; Judgments – Void

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Civil Procedure – Res Judicata; Judgments – Collateral Attack

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Civil Procedure – Res Judicata; Judgments – Collateral Attack

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This appeal is from the Kosrae State Court's July 7, 2011 decision affirming the Kosrae Land Court's August 26, 2010 decision barring, on res judicata grounds, the claims of the Heirs of Moses Henry and John Sigrah to the land Innem (also known as Lot 450 and 079-K-01). We remand with directions.

I. BACKGROUND

Before 1930, Henry Soarku inherited the land Innem from his adoptive father, King Awane Sru II. While living on Pohnpei, Soarku ran up debts at the Nambo store and so he transferred Lot 450 to a Japanese national, Mr. Akinaga, for ¥400 (worth about U.S. $200[1] at the time). Mr. Akinaga put the land in his Kosraean wife's name. The 1932 Japanese land registration map showed Lot 450 as owned by Elise Akinaga. In 1960, H. Sewarku was the plaintiff in Trust Territory High Court Civil Action No. 53, which was tried together with Civil Actions No. 50 and 54. After trial, the Trust Territory High Court, on March 28, 1960, ruled that "[t]he part of the land 'Inem'" designated as Lot No. 450 on the 1932 Japanese land map was owned by Elise.

In 1972, Parcels No. 079-K-01 and 043-K-06 and other parts of Innem were designated a land registration area. On June 28, 1985, Elise Akinaga received a determination of ownership for Parcel 043-K-06, and on January 22, 1993, she was issued a certificate of title for Parcel 043-K-06. The Land Court hearing on Parcel 079-K-01 started on May 31, 2007, and ended on November 8, 2007. On June 19, 2008, the Land Court concluded that ownership of Lot No. 079-K-01 was not determined by the Trust Territory High Court because, that decision, as was the 1985 determination of ownership, was for Parcel No. 043-K-06 and not No. 079-K-01 so therefore res judicata could not apply. The Land

[1] Although the appellants emphasize that after World War II, ¥400 was worth about $1.11 U.S. or some other trivial sum, before World War II ¥1 was worth 50¢ U.S. so ¥400 would have been $200, which was a sizeable sum in 1930.

Court dismissed the Heirs of Akinaga, who then appealed to the Kosrae State Court.

On March 30, 2010, the Kosrae State Court vacated the Land Court decision and remanded the case to the Land Court. The Kosrae State Court ruled that the Heirs of Akinaga had not waived their res judicata defense. Applying the res judicata doctrine to the case before it, the Kosrae State Court ruled that, since the Trust Territory High Court combined the three civil actions for trial and that since all the parties in those actions were claiming the same land, all the parties were privies to the Trust Territory High Court decision. The Kosrae State Court concluded that the Trust Territory High Court decision had to be upheld and that Parcel No. 079-K-01 was part of Lot 450 as shown on the map as owned by Elise Akinaga. The Kosrae State Court did reject the Akinaga Heirs' defenses of laches and statute of limitations which they asserted bolstered their claim to Parcel 079-K-01. The Kosrae State Court overturned the Land Court's dismissal of the Heirs of Akinaga and remanded the matter for the Land Court to

> issue written findings and a decision consistent with statutory and procedural requirements. The Kosrae Land Court shall issue a decision on Parcel 079-K-01, to reflect the ownership and boundaries of the subject parcel consistent with the prior TTHC cases, and on the Japanese survey maps, sketches and boundary descriptions contained therein.

Memo. of Decision at 25 (Mar. 30, 2010). On August 26, 2010, the Land Court held that the Heirs of Akinaga were the true owners of Parcel No. 079-K-01.

The Heirs of Moses Henry and John Sigrah (collectively "the appellants") appealed that decision to the Kosrae State Court. On July 7, 2011, the Kosrae State Court ruled that res judicata and the Trust Territory High Court judgment barred the appellants' claims to Parcel 079-K-01.

On July 19, 2011, the appellants filed a petition for rehearing in the Kosrae State Court. And on July 26, 2011, they filed a notice of appeal to the FSM Supreme Court appellate division. That appeal was dismissed without prejudice for lack of jurisdiction because the appeal was premature since the petition for rehearing in the Kosrae State Court remained undecided, but the court noted that once the Kosrae State Court has disposed of the rehearing petition, any party could file a new (and effective) notice of appeal, and the FSM Supreme Court appellate division proceedings would start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM Intrm. 542, 546 (App. 2013). That occurred and the appellants timely appealed.

II. Issues Presented

The appellants contend that 1) the August 26, 2010 Land Court decision was erroneous and contrary to law; 2) the Kosrae State Court erred by not addressing any of the appellants' arguments under Title 11 of the Kosrae State Code; 3) the Kosrae State Court misapplied the res judicata doctrine inconsistent with Title 11 of the Kosrae State Code; 4) their Kosrae constitutional procedural due process rights were violated when they were not granted a full adjudicative hearing in the Land Court for their land claims 5) their father Soakru was denied substantive due process because he was not afforded a full adjudicative hearing or trial by the Trust Territory government; and 6) the Kosrae Constitution requires that a three-judge panel preside over appeals from the Land Court.

III. Standards of Review

The appellants' issues are questions of law. Our review of questions of law is de novo. Palsis v. Kosrae, 17 FSM Intrm. 236, 240 (App. 2010); George v. Albert, 17 FSM Intrm. 25, 30 (App. 2010). Since a trial court's findings are presumptively correct, any challenged findings of fact will be reviewed

on a clearly erroneous standard. George v. George, 17 FSM Intrm. 8, 9-10 (App. 2010).

IV. ANALYSIS

A. *Land Court Appeals to a Three-Judge Panel*

The appellants contend that the appeal from the Land Court should have been heard by a three-judge panel. They rely on a Kosrae constitutional section which provides:

> The State Court is a court of record and the highest court of the State. It consists of a Chief Justice and an Associate Justice. Additional associate justices may be added by law. Retired justices, justices pro tempore qualified by law, and sitting justices from other jurisdictions within the Federated States of Micronesia may serve at the request of the Chief Justice. Each justice is a member of both the trial division and the appellate division, except that sessions of the trial division may be held by one justice. No justice may sit with the appellate division in a case heard by him in the trial division. At least three justices shall hear and decide appeals. . . .

Kos. Const. art. VI, § 2. We address this issue first since, if a Kosrae State Court three-judge panel should have heard the case, then we would remand it for such consideration without addressing any of the appeal's other merits.

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, Kos. Const. art. VI, § 6, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the [non-existent] Kosrae State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 420 (Kos. S. Ct. Tr. 2004). The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts and neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to a State Court appellate division. *Id.* at 421. There is thus no requirement that an appeal from Land Court be heard by a three-judge panel in the Kosrae State Court.

B. *Res Judicata and the Trust Territory High Court Judgment*

1. *Kos. S.C. § 11.612(6)*

The appellants also assert that Trust Territory High Court judgments are not land determination cases carrying res judicata status under the Kosrae statute. They contend that Title 11, section 612(6) restricts the effect of res judicata only to prior judgments of the Kosrae Land Court, which was created in 2001. The statute reads: "A justice shall not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Land Court shall accept prior judgments as res judicata and determine those issues without receiving evidence." Kos. S.C. § 11.612(6).

This statute cannot be interpreted the way the appellants suggest. The statute says, "shall not adjudicate a matter previously decided by a court . . . ." Kos. S.C. § 11.612(6). The appellants use the definition in Kos. S.C. § 11.601(4): "'Land Court' or 'Court [capitalized]' means the Land Court created by this chapter." [The chapter uses the full phrase "Land Court" consistently throughout.] The statute's use of the indefinite article "a" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s

reference to "a court." To read this statute the way the appellants want would mean that the Kosrae Land Court could not give res judicata effect to any court judgment before 2001, including Trust Territory High Court, Kosrae State Court, or FSM Supreme Court judgments, an absurd result, putting many final land adjudications into doubt.

A judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which § 11.612(6) does not abolish, would accord res judicata status, when the elements are met, to Trust Territory High Court judgments. Additionally, the Compact of Free Association requires that res judicata status be given to Trust Territory judgments. "[F]inal judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of . . . the Federated States of Micronesia to grant relief from judgments in appropriate cases." Compact of Free Ass'n § 176. The 1960 Trust Territory High Court judgment was a final judgment.

The doctrine of res judicata applies to Trust Territory High Court decisions, Akinaga v. Heirs of Mike, 15 FSM Intrm. 391, 398 (App. 2007), and FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions, Nahnken of Nett v. United States, 7 FSM Intrm. 581, 586 (App. 1996). But final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM Intrm. 146, 149 (Chk. S. Ct. App. 2007). For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. *Id.*

2. ¥400

The appellants contend that ¥400 purchase price equaled $1.11 (U.S.) and that this purchase price for over 600,000 square meters makes the whole transaction very questionable and thus the Trust Territory High Court judgment suspect.

Before World War II, one Japanese yen equaled 50¢ (U.S.) so ¥400 would have equaled $200. Two hundred dollars was a sizeable sum in the 1930s. The "sale" amount cannot be used to undermine the Trust Territory High Court judgment.

3. *Trust Territory High Court Judgment ¶ 2*

The appellants contend that section 2 of the Trust Territory High Court judgment controls because that clause carved out an exception to the judgment and, in the appellants' view, grants specific rights to all other interests in Innem, such as the appellants' claims through Henry Soakru. That section states "this Judgment shall not affect any rights of way there may be over the lands in question." Judgment ¶ 2 (T.T. High Ct. Civ. Nos. 50, 53, & 54 Mar. 28, 1960).

The appellants misunderstand this paragraph of the Trust Territory High Court judgment. "Rights of way" over land are such things as roads, footpaths, and utility easements. A "right of way" is "[t]he right to pass through property owned by another" or "[t]he strip of land subject to a nonowner's right to pass through." BLACK'S LAW DICTIONARY 1440 (9th ed. 2009). Rights of way do not include the type of ownership rights that the appellants claim. The appellants do not claim to be nonowners with a right to pass over someone else's property. They claim to be the owners. This argument gives the appellants no support.

4. *Lot 450*

The appellants contend that the Trust Territory High Court judgment is ambiguous about whether the "Lot 450" referred to comprises all of the original Lot 450 or only part of it. They contend that Lot 450 must have been subdivided at some point. The Trust Territory High Court judgment says, "The part of the land known as 'Inem' . . . which part is designated on the Kusaie Office record as No. 450 and is designated as Lot No. 450 on the photostatic copy of a Japanese map dated 1932 . . . is owned by Elise . . . ." Judgment ¶ 1 (T.T. High Ct. Civ. Nos. 50, 53, & 54 Mar. 28, 1960).

This contention is tortured reasoning. It seems fairly clear that the Trust Territory High Court judgment states that all of Lot 450 is owned by Elise but that Lot No. 450 is only part of "Inem."

5. *Judgment on the Merits*

The appellants contend that the Kosrae State Court never addressed the second element of res judicata of what they consider to be the three elements of res judicata – 1) an earlier decision on the issue; 2) a final judgment on the merits: and 3) the same parties or parties in privity with the original parties. The appellants question whether all the landowners were present at a full evidentiary hearing in the Trust Territory High Court cases.

The judgment itself states that all three civil actions were "tried together." That certainly sounds like a judgment on the merits came after an evidentiary proceeding with all parties represented. The appellants' questions do not really challenge whether the judgment was on the merits but rather whether the judgment could be subject to a collateral attack (*see* Due Process pt. IV.C below.) The Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked.

C. *Due Process*

1. *Land Court Rehearing*

The appellants contend that their due process rights were violated because after the Kosrae State Court remanded the matter to the Land Court, the Land Court did not rehear the matter in its entirety but had a perfunctory hearing to apply the Trust Territory High Court judgment as res judicata. The appellants rely on Kos. S.C. § 11.614(5)(d), which provides:

> If the State Court finds the Land Court decision was not based on substantial evidence or that the Land Court decision was contrary to law, it shall remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate.

The statute itself refutes the appellants' contention. It says, "re-hearing the matter in its entirety or such portions of the case as may be appropriate." The Kosrae State Court could, if appropriate, order a rehearing for only a portion of the Parcel 079-K-01 case. That apparently is what it did.

2. *Non-Constitutional Courts*

The appellants, relying on United Church of Christ v. Hamo, 4 FSM Intrm. 95 (App. 1989), assert that the rights of Kosrae citizens (themselves) must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court. The Hamo case discusses the propriety of the Trust Territory High Court deciding cases when both the Trust Territory

High Court and constitutional FSM courts were simultaneously in existence and functioning. In 1960, there were no constitutional courts and the Trust Territory courts were the only functioning court system. The Hamo case thus offers the appellants no support. We thus reject this contention.

3. *Trust Territory High Court Due Process*

The appellants contend that their predecessor in interest, Soarku, was denied due process in the Trust Territory High Court because that court did not give him an opportunity to be heard or to defend his property.

There was no Kosrae or FSM Constitution in 1960. Constitutional rights are generally prospective, not retroactive. There was, however, a Trust Territory Bill of Rights whose due process clause was presumed to have the same meaning as in the United States. *See* Purako v. Efou, 1 TTR 236, 239-40 (Truk 1955); Ichiro v. Bismark, 1 TTR 57, 60 (Pal. 1953).

The appellants' claim here sounds like a claim that the Trust Territory judgment is infirm and subject to collateral attack on due process grounds. As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Arthur, 15 FSM Intrm. 625, 633 (Pon. 2008). When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001). A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void.

Relief from the Trust Territory judgment may be sought through an independent action in the Kosrae State Court, Kos. Civ. R. 60(b) ("This rule does not limit the power of a court to entertain an independent action."), as it is, in this instance, the successor court to the Trust Territory High Court. A party collaterally attacking a judgment has the burden to establish its prerequisites. *See, e.g.*, U.S. Care, Inc. v. Pioneer Life Ins. Co., 244 F. Supp. 2d 1057, 1062 (C.D. Cal. 2002). The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Arthur v. FSM Dev. Bank, 16 FSM Intrm. 653, 659 (App. 2009). If any one of these elements is missing the court cannot take equitable jurisdiction of the case. *Id.* A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM Intrm. 281, 285 (Chk. S. Ct. Tr. 2002).

We think that the appellants can, as a defense to the application of res judicata, collaterally attack the Trust Territory High Court judgment. They should be permitted the opportunity to try to do so. Whether this can only be done in the Kosrae State Court, since it is a court of law and equity, or whether it could be done in the Land Court, we take no position on at this time. We only note that the Kosrae State Court has previously ruled that the Land Court is not a court of equity, Heirs of Benjamin v. Heirs of Benjamin, 15 FSM Intrm. 657, 662-63 (Kos. S. Ct. Tr. 2008), and that an independent action for relief from judgment is an equitable proceeding.

V. Conclusion

Appeals from the Kosrae Land Court are heard by a single Kosrae State Court trial division justice and not by a three-judge panel. No Kosrae State Court appellate division has been created yet so an appeal from a single judge in the Kosrae State Court is to the FSM Supreme Court appellate division, which will hear appeals with a three-judge panel.

Generally, Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. The appellants should be afforded the opportunity to mount a collateral attack on the Trust Territory High Court judgment that otherwise must be given res judicata effect. We therefore remand the matter to the Kosrae State Court for it to determine whether the appellants may obtain relief from the Trust Territory judgment. The July 7, 2011 decision is vacated so that the appellants may present their collateral attack and their grounds for it and so the Kosrae State Court may consider and rule on that attack's merits before deciding whether to affirm the Land Court.

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FSM SUPREME COURT APPELLATE DIVISION

IN THE MATTER OF THE SANCTION OF ATTORNEY YOSLYN G. SIGRAH and TRIAL COUNSELOR LIPAR L. GEORGE, Appellants.	)	APPEAL CASE NO. K5-2013

OPINION

Argued: February 20, 2014
Decided: March 20, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

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